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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW BASSETT,

Defendant and Appellant.

B207500

(Los Angeles County Super. Ct.  
No. KA081871)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Buckley, Judge. Affirmed as modified.

Kelly M. Cronin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

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The jury found defendant Matthew Bassett guilty of misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1))<sup>1</sup> and felony resisting an executive officer (§ 69).<sup>2</sup> The trial court found true allegations that defendant served a prior prison term within the meaning of section 667.5, subdivision (b), and suffered a prior serious or violent juvenile adjudication (robbery) within the meaning of the three strikes law (§§ 1170.12, subds. (a)-(d), 667, subds (b)-(i)). Defendant was sentenced to four years in state prison, consisting of the middle term of two years for resisting an executive officer, doubled pursuant to the three strikes law. A concurrent term of 365 days in county jail was imposed for the misdemeanor offense. The court struck imposition of sentence on the prior prison term allegation.

Defendant contends the use of his prior juvenile adjudication to increase his sentence under the three strikes law beyond the statutory maximum violated his constitutional rights to a jury trial and due process. He further contends the trial court should have stayed the sentence for the misdemeanor resisting a peace officer, pursuant to section 654, because the two convictions arose from an indivisible course of conduct. We hold the use of the prior juvenile adjudication to increase defendant's sentence was constitutional, but the sentence for resisting a peace officer should have been stayed under section 654. We order the sentence for resisting a peace officer stayed, but affirm the judgment in all other respects.

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<sup>1</sup> Hereinafter, all statutory references will be to the Penal Code unless otherwise indicated.

<sup>2</sup> Defendant was found not guilty of battery with injury on a peace officer (§ 243, subd. (c)(2)).

## STATEMENT OF FACTS<sup>3</sup>

In July 2007, defendant was paroled from prison. As a condition of parole, he was required to avoid criminal conduct. On January 16, 2008, after defendant advised his parole officer he had been arrested for driving under the influence, the parole officer told defendant to report to the parole office on January 18, 2008, to be returned to custody. On January 18, 2008, defendant called the parole office and said he would not be coming in as he had car payments and a girlfriend to take care of. A warrant was issued for his arrest and the Glendora police were notified.

On January 25, 2008, Glendora police officers were assigned to locate defendant as a parolee-at-large. Waiting for him at his girlfriend's house, they observed the lights in the house flickered on and off, as if to warn that the police were watching. A car pulled up to the house. A man from the car quickly ran into the house and out again to the car. The car drove away. A marked Glendora police car followed and made a traffic stop of the vehicle. Officer Al Ancheta told defendant to get out of the car. Officer Shiloh Catanese was standing next to where defendant was seated.

As defendant exited the car, Officer Catanese placed her hand on the door and asked defendant what he was doing. He answered that Officer Catanese's partner had asked him to get out. She said, "Okay." Defendant got out of the car and started to walk away. As Officer Catanese asked where he was going, she grabbed the back of defendant's jacket, and he struggled to get away from her. He broke away from her briefly, but she gripped the back of his jacket again. He twisted back and forth to get away. As Officer Catanese tried to get a better grip, his left elbow hit her in the cheek. She lost her grip and defendant ran away. This encounter with Officer Catanese took under ten seconds. Defendant was pursued and apprehended.

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<sup>3</sup> As this appeal presents no issue of sufficiency of the evidence to support the convictions, we state the facts in the light most favorable to the judgment.

## DISCUSSION

### Juvenile Adjudication

Defendant contends that the use of his prior juvenile adjudication for murder to double his sentence under the three strikes law violated his due process right to a jury trial under *Apprendi v. New Jersey* (2000) 530 U.S. 466, because he was not afforded a jury trial when his juvenile case was adjudicated.<sup>4</sup> We disagree.

California Courts of Appeal have consistently rejected the contention.<sup>5</sup> (See, e.g., *People v. Pearson* (2008) 165 Cal.App.4th 740, 748, fn. 3; *People v. Del Rio* (2008) 165 Cal.App.4th 439, 441; *People v. Buchanan* (2006) 143 Cal.App.4th 139, 149 [“‘a prior juvenile adjudication may constitutionally be used as a “strike” despite the fact that there is no right to a jury trial in juvenile proceedings.’ [Citation.]”]; *People v. Superior Court (Andrades)* (2003) 113 Cal.App.4th 817, 834.) We decline to depart from the consistent analysis of our Courts of Appeal.

### Section 654

Defendant contends the concurrent sentence imposed for resisting a peace officer (§ 148, subd. (a)(1)) should be stayed under section 654 because it constitutes an impermissible, multiple punishment. We agree.

Section 654 prohibits multiple punishments for a single act or omission, even when that act or omission violates more than one statute and thus constitutes more than

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<sup>4</sup> In the trial court, defendant noted he had no right to a jury trial of the juvenile strike prior and argued the strike should be stricken in the interest of justice because he was a juvenile at the time of the offense, it was an old felony, and it was not a violent or serious felony. He did not make a constitutional argument.

<sup>5</sup> The issue is currently pending before the California Supreme Court in *People v. Nguyen* (2007) 152 Cal.App.4th 1205, review granted, October 10, 2007, S154847.

one crime.<sup>6</sup> Thus, although a defendant may be charged with and convicted of multiple crimes arising from a single act, the defendant may be sentenced only on the crime carrying the highest punishment; the sentence on the other counts arising from the same act must be stayed. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) However, if the defendant “harbored ‘multiple criminal objectives,’ which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, ‘even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.’ [Citation.]” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

The question whether a defendant harbored multiple objectives within the meaning of section 654 is a question of fact, and we will affirm if there is substantial evidence to support the trial court’s implied finding that defendant in this case had different objectives with regard to resisting a peace officer<sup>7</sup> and resisting an executive officer.<sup>8</sup> (See *People v. Osband* (1996) 13 Cal.4th 622, 730-731.)

The record does not contain substantial evidence that defendant harbored two criminal objectives that were independent of each other when he resisted Officer Catanese. The record reveals defendant had a single intent: to get away from police apprehension. While his conduct violated two separate crimes, he did so while engaged

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<sup>6</sup> “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654, subd. (a).)

<sup>7</sup> “Every person who willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment” is guilty of resisting a peace officer in violation of section 148, subdivision (a)(1).

<sup>8</sup> “Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty” is guilty of resisting an executive officer in violation of section 69.

in a single course of conduct whose objective was to avoid being taken into custody. The sentence for resisting a peace officer should have been stayed under section 654.

### **DISPOSITION**

The judgment is modified to reflect that the sentence for resisting a peace officer in violation of section 148, subdivision (a) is stayed pursuant to section 654; the stay to become permanent upon completion of the sentence under section 69. The clerk of the superior court is to prepare an amended abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.